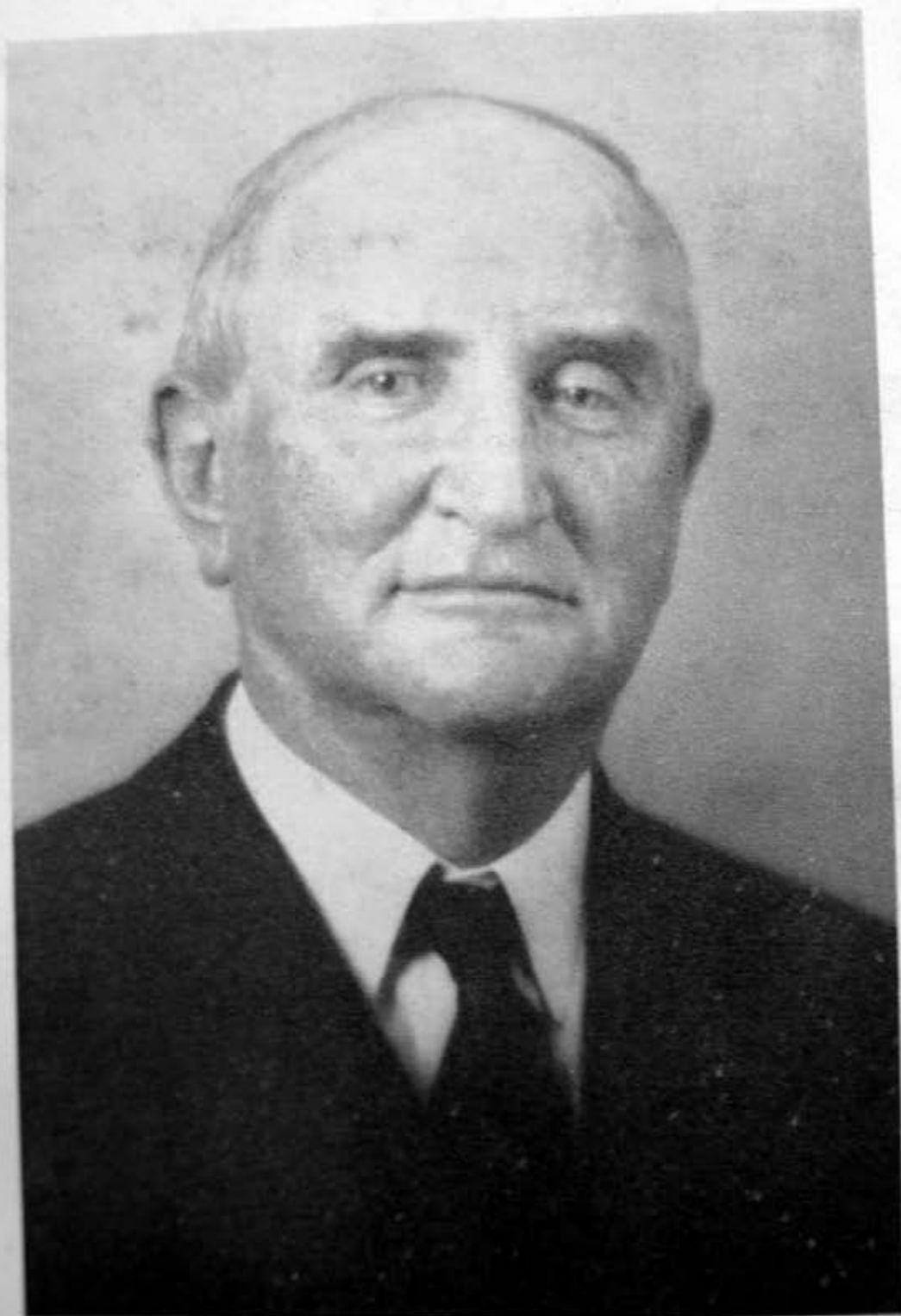


In Memoriam

George W. McClintic



George Warwick McClintic



In the District Court of the United States for the Southern District
of West Virginia at Charleston

In Memoriam
George W. McClintic

Present:

Hon. Harry E. Watkins, Judge of the District Courts of the
United States for the Northern and Southern Districts of West
Virginia; and

Hon. Ben Moore, Judge of the District Court of the United States
for the Southern District of West Virginia.

PROCEEDINGS

Thursday, November 12, 1942
2:00 o'clock P. M.

THE COURT (Judge Watkins): We are meeting in special
session of this court today for the purpose of presenting memorials
to the Honorable George W. McClintic, veteran judge of this court.
I recognize now A. Guy Stone, President of the Charleston Bar
Association.

Remarks of

A. GUY STONE, President
Charleston Bar Association

May it please the Court, members of the Bar and guests:

We of the Bar are here today to write the final pages in the record of our appreciation of the character and services of Judge McClintic.

Judge McClintic's life on the bench almost exactly spans the period of my experience at the bar. To me, therefore, the judge and this court for many years were one and the same.

It is natural that we should identify our institutions with the personalities of the individuals who direct them. Judge McClintic was not long on the bench before his personality and that of the court became so identified. Neither suffered in the process.

Under his tenure the bar and the public came to know this court as an institution of superlative integrity and fearlessness and intensely devoted to the basic principles of our constitutional democracy. That is the record which will endure long after our time and long after the pages of our memorials have yellowed with age.

To insure that future actors in this court will have some idea of the esteem in which Judge McClintic was held by those of his own day, those who were privileged to know him and to serve under his guidance, we have had prepared and offer as a testimonial of our permanent affection and respect the portrait which is to be dedicated today. Miss McClintic, we are honored by your participation in this ceremony and we ask you, on our behalf, to draw aside the curtain from the portrait of your father.

(Thereupon Miss Elizabeth McClintic, daughter of the Honorable George W. McClintic, unveiled the portrait of her father, which had been painted by Mrs. B. E. Barnes.)

MR. STONE: Your Honors, I have the honor to present the portrait of Judge McClintic to the Bench and Bar of Southern West Virginia.

Thank you.

THE COURT (Judge Moore): Mr. Stone, the Court accepts this portrait of Judge McClintic, and we thank the Bar Association for its thoughtfulness in making the presentation and express our appreciation to the artist for having prepared such a splendid portrait. It will be hung on the walls of the court room along with the portraits of the distinguished predecessors of Judge McClintic, and it will help the judges who sit on this bench, the lawyers who practice in this court, and the public generally to keep fresh in their minds the memory of this great judge and good man who for so many years was the presiding judge of this court.

Remarks of

HON. HARRY E. WATKINS

United States District Judge

The subject of a famous lecture was "The Numerals." The author pointed out that numerals declared distances, calculated values and determined weights. But, says the author, the real worth of numerals is not understood until they measure the years of life of a noble man.

I would like to voice something of my estimate of this man for whom I held a genuine affection, and whom it was my privilege to have had as a friend. As I deeply valued that friendship during his life, so shall the memory of that association be to me a benediction always.

This community, state and nation has had removed from participation in its affairs a jurist of recognized ability, who wore the ermine of his office through years of service in this court, and relinquished it unsullied to his successor.

The forum of the court room was where he experienced his greatest pleasure. He loved his work and willingly assumed his share of the business in this district, even after his retirement. He believed in the language of former Chief Justice Hughes, that "Work condemns a man to perpetual youth." He was loved and honored as a "Gentleman of the Old School."

He died September 25, 1942. Thus ended the career of a patriotic citizen, a great lawyer, an able and courageous judge.

I have known Judge McClintic for many years, but it was not until after I became a member of this court that I learned to know him intimately. As a novice jurist, questions sometimes arose which I desired to discuss with someone. I soon found that I could talk with Judge McClintic freely, confidentially, if need be, upon most any subject. His vast fund of general knowledge, his familiarity with fundamental principles of law, and the reasons for them, their history and their purposes, usually enabled him to suggest an answer to the question or a solution of the problem which bothered me. He met me on my level and discussed problems from the viewpoint of my limited knowledge and experience. I enjoyed visiting with him, and to hear about law questions and courts, lawyers of the past and present, and his experience as a judge. Abstract systems of law had no appeal to him. He never tried to fit the conduct of the litigants into some well-recognized pigeonhole or groove of law. In his approach to a case he became familiar with the facts and then reached into the realm of legal principles and chose one or more, which, when applied to the facts, would produce just and beneficial results, just as a skilled mechanic would reach into his tool box for a tool made for the specific work at hand.

His clear eyes were not misled by sophistries, however expressed in fervid rhetoric.

He enjoyed talking to people and spent hours in his office hearing the troubles of others. The poor and unfortunate found in him an honest, sympathetic and courageous representative, and their confidence was never misplaced.

Judge McClintic perfectly typified strength. Massive and rugged in face and form, great in mind and pure in heart, he was strength in its best human personification. His high place in the history of this court is secure. He was a great Judge and he was a great American.

He is gone, and while the west is still aglow with his radiance, it is well for us to pause and take count of our own selves. His life has a lesson to teach us, if we care to stop and learn.

Great in intellect, noble in nature, true in friendship, courageous in life, we present him in this memorial which inadequately portrays his virtues. In the language of Miranda in Shakespeare's *Tempest*: "How beauteous mankind is; O, what a brave new world that had such people in it."

Remarks of
HON. BEN MOORE
United States District Judge

In speaking of Judge McClintic, it is not easy to find words with which to express what I would like to say.

He was an example of the great truth that what we say—perhaps even what we do—is subordinate and secondary to what we are. Judge McClintic was the embodiment, the incarnation, of certain great qualities, certain traits of character, that are too rarely found among men.

He was honest to the point of ruthlessness. He never hesitated to express his convictions, whether they were popular or unpopular—whether he made friends or enemies by doing so. He had the moral courage which is an essential attribute of a great judge.

Judge McClintic had little of the petty pride or “insolence of office” which sometimes results when power is given into the hands of him who has not learned to exercise it with humility and moderation. He was not unconscious of the power of his office, and he did not hesitate to use this power to the full as occasion required; but the judicial robe gave him no feeling of superiority or pompousness. He remained to the last a simple and unpretentious man of the people.

No one who wished to talk with Judge McClintic was ever denied that privilege. To lawyer or litigant, juror, convicted criminal, friend or enemy, the door of his chambers was never closed. He said to me many times that if a judge is not able to talk freely with any and all persons and still preserve his integrity and free judgment, he is not fit to be a judge.

Judge McClintic wasted no sympathy on the confirmed and deliberate criminal; but I can testify that his feeling of compassion for those who are led into crime by poverty and misfortune was genuine and deep. He fashioned the probation system into a most efficient and successful means of administering justice through rehabilitating rather than imprisoning those men and women who are proper subjects for such treatment.

I owe much to his counsel and wise advice. It is with a feeling of almost filial affection that I offer this tribute to his memory.

THE COURT (Judge Watkins): Mr. Fred O. Blue will present the memorial of the Charleston Bar Association.

Memorial of
THE CHARLESTON BAR ASSOCIATION

Presented by
FRED O. BLUE, Esq.

Again The Charleston Bar Association is called upon to pause to record the passing and to pay tribute to the memory of one of its distinguished members. George Warwick McClintic, for many years an active member of the bar of this state and for the last twenty years of his life Judge of the District Court of the United States for the Southern District of West Virginia, departed this life on the 25th day of September, 1942. He was one of the charter members and founders of this Association, as well as an active member of the West Virginia and American Bar Associations.

Judge McClintic was born at Mill Point in Pocahontas County, West Virginia, on the 14th day of January, 1866. His education was acquired in the public schools of his native county and at Roanoke College, from which he graduated with a degree of A. B. in 1883. He graduated from the College of Law of the University of Virginia in 1886. After a brief interval spent in the west, he came to Charleston and in 1888 formed a partnership in the practice of the law with the late Wesley Mollohan, of which William Gordon Matthews later became a member. Upon the death of Mr. Mollohan in 1911, J. Edgar Campbell became a member of the firm of McClintic, Matthews and Campbell, which continued until Judge McClintic went on the bench in 1921. From the time he began his practice here until he was appointed to the office of Judge of the District Court of the United States for the Southern District of West Virginia, Judge McClintic was one of the most active practitioners of the state. During this period the firms of which he was a member were constantly engaged in many important controversies in the courts of West Virginia, both state and federal, and Judge McClintic contributed in full measure to their successful activities. At the bar he was recognized as a courageous and successful advocate and a wise and careful counsellor.

Notwithstanding his professional engagements he accepted election to the House of Delegates of the West Virginia Legislature for several terms and became a recognized leader of the activities

of that branch of the Legislature. He had an active part in drafting and enacting many statutes, now found in our Code, dealing with matters of public interest. It was while a member of the House of Delegates that his outstanding ability as a lawyer came to the attention of the late President Harding, who appointed him to the District Judgeship in 1921. He brought to the federal bench the experience of a lawyer with many years of active practice, the seasoned judgment of a legislator and above all an understanding of the people of his district such as is given to but few judges. The facility with which he discharged the duties of District Judge during the twenty years of his incumbency made him one of the outstanding District Judges of the United States. His familiarity with the conduct of the business of the District Court was such that he became an authority upon matters of practice and procedure and was constantly called upon for counsel and advice at meetings of bar associations and other gatherings where such matters come under discussion. The Year Books of the West Virginia Bar Association contain a number of valuable papers contributed by Judge McClintic. Notable among these is his address on "Fifty Years at the West Virginia Bar," delivered at the Wheeling meeting in 1936. He was an active participant in the annual meetings of the Judicial Conferences of the Fourth Circuit, held at Asheville, North Carolina. In June, 1941, he delivered an address before this Conference entitled "Fifty Years of the Circuit Court of Appeals," in which, after reviewing the formation of that court under the Act of March 3, 1891, he gave brief sketches of the lives of all the judges who had sat upon the Circuit Court of Appeals for the Fourth Circuit (except the judges then living), all of whom he had known. This address, subsequently printed in pamphlet form, was instantly recognized as a masterpiece in the field of legal literature and biography, holding a well deserved place as a legal classic in the libraries of lawyers and judges of the Fourth Circuit.

Judge McClintic's experience in being called upon to administer the harsh penalties of the criminal law in numerous cases where he conceived the defendants to be more unfortunate than vicious caused him at an early day, before the passage of the present federal probation act, to devise and use a system of probation under which he gave to many a first offender the opportunity to repent and become a useful citizen instead of having the stigma of a prison term

attached to his name. Thus it was that Judge McClintic became the founder of probation as later established in the federal courts by act of Congress and as now applied by practically all the courts of the land. An address upon probation delivered by him before the Judicial Conference of the Fourth Circuit was published in the American Bar Association Journal and immediately recognized as the outstanding treatise upon this important development in the field of criminal law.

Limits of time and space do not permit a detailed review of the many important cases in which Judge McClintic figured during his career at the bar and on the bench. It may accurately be said of him that he met the duties of both positions with a courage, vigor and intelligent conception which may well furnish example for emulation by future lawyers and judges.

He had a remarkable memory. His knowledge of local history was encyclopedic. Not only was he steeped in the political history and lore of his native state, but he knew intimately the stories of its prominent families and citizens. We know of no other man in the State of West Virginia who had as broad an acquaintance with its citizenship as Judge McClintic.

He had a deep insight into human nature and character, a gift which was of inestimable assistance to him in administering the discretionary powers of the court in granting probation or imposing punishment. Judge McClintic was by some considered stern in the conduct of his office. The fact is that while he possessed the sternness and inflexibility which must be characteristic of every righteous judge, he also had a keen sympathy for those who deserved it, and his power of discrimination in this regard was truly amazing. He was always more ready to extenuate than to punish. In fact, next to his unflinching courage, his outstanding trait was a warmth of heart and kindly tenderness for the women, the young and the first offenders brought before him for violation of federal statutes at every term he held.

It is always difficult to record the personal side of a strong and complex nature. In one aspect Judge McClintic was typically a rugged individualist. In his long term on the bench he never trimmed a sail to any gale of popular demand or bowed to either censure or approval. Witness his unflinching enforcement of the unpopular prohibition laws while the Eighteenth Amendment re-

mained part of the Constitution he had sworn to support. Recall also his preservation of law and order in the coal mining fields of southern West Virginia at great personal peril during the stern days of the armed march. Of the same pattern were his ancestors and those others who made this country what their sons are now fighting to preserve.

But there was another side to him. In his personal relations with his family and friends he was an interesting raconteur and an engaging companion. He had a deep inherited love of his native Pocahontas and its sturdy people. The pioneer spirit of his forefathers was strong in him. For half a century his short vacations were mainly spent in camps in the Pocahontas country which in the earlier years could be reached only on foot or by packhorse. It is literally true that he knew and loved every mountaintop and water course of this "shaggy-breasted motherland that bore him." He was a welcome visitor in the cabin of the mountaineer. Neither the honors which later came to him nor the duties of high position ever abated his love of his native county and its people,—an affection which was returned in kind.

The life of Judge McClintic from the time he entered into the practice of his profession until a short time before his death was one of constant ceaseless labor. His career at the bar, in the halls of legislation and on the bench well expressed the philosophy of work. In the evening of his life when time and circumstance seemed to unite to present an opportunity for retirement and the enjoyment of ease and freedom from the arduous labors of the bench, he declined to take advantage of the opportunity but continued to exercise his faculties in the administration of his office to the full extent of their vigor until a short time before his death.

In the passing of Judge McClintic the bench of the United States loses a distinguished member; the Bar of West Virginia is deprived of an example of vigorous and courageous work; and his family and friends lose a companionship impossible to replace.

Pursuant to the instructions of The Charleston Bar Association the undersigned committee will present copies of this memorial to the family of Judge McClintic and to the District Court of the United States for the Southern District of West Virginia, the

Supreme Court of Appeals of West Virginia and the Circuit Court
of Kanawha County.

HAROLD A. RITZ
ROBERT S. SPILMAN
FRED O. BLUE
HOMER A. HOLT
A. S. ALEXANDER

Charleston, West Virginia
October 6, 1942.

THE COURT (Judge Watkins): Many friends and members
of the Bar from Huntington are here today. Mr. Herbert Fitzpatrick
will present the memorial of the Cabell County Bar Association.

Memorial of
CABELL COUNTY BAR ASSOCIATION
Presented by
HERBERT FITZPATRICK, Esq.

At a meeting of the Executive Committee of the Cabell County
Bar Association the following memorial was presented by the com-
mittee formerly appointed, consisting of Herbert Fitzpatrick, Harry
Scherr and J. J. N. Quinlan, members of the Bar Association of
Cabell County.

Upon motion, the memorial was unanimously adopted and
ordered to be certified by the president and secretary of the Cabell
County Bar Association and presented to the memorial meeting
called for Charleston, West Virginia, Thursday, the twelfth day of
November, One Thousand Nine Hundred and Forty-two.

IN MEMORIAM

George Warwick McClintic, admitted to the practice of law in
Charleston in One Thousand Eight Hundred and Eighty-eight;
died in Charleston on the twenty-fifth day of September, One
Thousand Nine Hundred and Forty-two.

George Warwick McClintic was born in Pocahontas County,
West Virginia in One Thousand Eight Hundred and Sixty-six, the

son of William H. and Mary Mathews McClintic. In One Thousand Eight Hundred and Eighty-three he was graduated from Roanoke College with a Degree of A. B. and was granted the Degree of L.B. from the University of Virginia in One Thousand Eight Hundred and Eighty-six. His Alma Mater, Roanoke College, conferred upon him the Degree of Doctor of Laws in One Thousand Nine Hundred and Twenty-eight. He came to Charleston for the practice of his profession in One Thousand Eight Hundred and Eighty-nine and formed a partnership with one of West Virginia's most distinguished lawyers, Wesley Mollahan, and into this organization later came W. Gordon Mathews, recognized as one of the state's most brilliant younger lawyers, the firm being Mollahan, McClintic & Mathews.

George McClintic served as City Attorney of Charleston from One Thousand Nine Hundred and Fifteen to One Thousand Nine Hundred and Seventeen. In One Thousand Nine Hundred and Nineteen he was elected as a Member of the House of Delegates and was the outstanding majority member of that body, not only being chairman of the Judiciary Committee but also serving as Floor Leader. He was serving in that capacity when the Amendment to the Constitution which has given West Virginia its good roads was considered and it was probably the most important measure, the passage of which was largely due to his efforts. He was in the Legislature when he was appointed to the United States District Court for the Southern District of West Virginia by President Harding in One Thousand Nine Hundred and Twenty-one. He continued to serve as Judge of the United States District Court until his retirement in One Thousand Nine Hundred and Forty-one, spending the last year of his life in his home in Charleston.

It was while on the bench as United States District Judge that national attention was focused upon him by reason of his decisions in labor dispute cases, his strict enforcement of the Eighteenth Amendment and the prohibition laws stemming from that amendment, and more particularly his humane enforcement of the probation laws.

George Warwick McClintic was a composite character. The court over which he presided was for him never anything except a place where justice was to be done as he saw it. Of strong convictions, of indomitable courage, his directing mind in the trial of any case carried the procedure in the direction of what he believed

to be the very right of the controversy. Seemingly at times arbitrary, yet there could never be a doubt that underneath any apparent sternness there was always kindness of spirit and his searching desire for justice. The culprit might find fault but the people of the state knew that under George Warwick McClintic the individual always received that administration of justice which was his due. He brought to the bench out of his broad practice a wealth of experience. He succeeded on the bench two great lawyers, Judge Jackson and Judge Keller, and measured fully up to the high standards of the court as set by them.

As a lawyer, George Warwick McClintic represented the highest type of the profession. The same courage which marked his career on the bench was always with him when he was either trying a case or acting as counsellor for some important interest. He knew what intellectual courage meant and when he saw the way clear before him, never hesitated for a moment to follow that path irrespective of opposition. In the olden days when he was at the Bar the lawyers of the state realized that they met in him always an opponent of the strongest arm but at the same time the fairest mind. He carried with him in his practicing days exceptionally broad information as to precedents and was steeped in the reasoning of the common law. He knew intimately the problems of his state. It made little difference whether the question presented involved coal, oil, gas or railroads, he was equally conversant with each, and out of the wealth of his experience always brought helpful advice. It is probable that he was the "last of his race," legally speaking. The land titles of West Virginia he had grown up with. His senior law partner, Wesley Mollohan, before him, was a great "land lawyer" and it was but natural that George McClintic should inherit through every day contact the same extensive familiarity with everything that concerned the trial of land cases and the handling of land matters. An old fashioned ejectment case was for him a great adventure and all of its tedious detail an interesting part of the contest. It was this knowledge, experience and skill which set him apart as a lawyer.

To know this great lawyer and great Judge as a man, as he moved daily in the walks of life, in the city which had seen him first starting when he was a young man and when it was a small town, was an experience; because George McClintic, out of his profession, away from the dignity of the bench, on the banks of a

stream with rod in hand, or in the field, with his friends, or at night sitting at the camp fireside, was, in his gentleness and kindness, one of the most delightful companions the streams and hills of West Virginia ever knew. The thing that was striking was his full knowledge. He knew and loved the wild life, the trees and grasses of his state and was conversant with them as are few men. West Virginia was for him something more than a name. His people had helped make it, he had helped make it, and it was an intimate part of his nature. It is doubtful whether any man in the state had the same full knowledge of the details of the history of West Virginia, whether known as written or *sub rosa*. His memory seemed to be without limit, and it is safe to say that many who read this short sketch will remember how he had listened in familiar conversation to the story of occurrences of the past not written and, with the passing of George McClintic, lost. Politics, legislative history, religious history, social history, family connections, whether in Virginia or in West Virginia, these he knew and loved to discuss and impart to the willing listener. Above all these things and crowning the man's character was his inflexible loyalty. It was seen in his convictions and his beliefs, but was magnificently superb in his unshakeable adherence to the cause of his friends.

His like shall not walk with us again.

HERBERT FITZPATRICK
HARRY SCHERR
J. J. N. QUINLAN

STATE OF WEST VIRGINIA
COUNTY OF CABELL

The foregoing resolution and memorial sketch, duly certified, for and on behalf of the Cabell County Bar Association.

Given under our hands, this the 10th day of November, 1942.

C. W. STRICKLING,
President

W. KENNON COWDEN, JR.,
Secretary

THE COURT (Judge Watkins): The next memorial will be presented by the Honorable Julian F. Bouchelle, Judge of the Circuit Court of Kanawha County.

JUDGE JULIAN F. BOUCHELLE: If your Honors please, what I have to say this afternoon consists of remarks made to the jury panel of the Circuit Court when it assembled on September 28, three days after the death of George W. McClintic. Those remarks were purely extempore. I feel somewhat apologetic for them; they were taken down by the court reporter at the time.

I was struck by the identical phrase used by Judge Moore in his opening remarks this afternoon about Judge McClintic, which I had occasion to use in my remarks to the jury, that he was a good man and a great judge.

*Remarks of Honorable JULIAN F. BOUCHELLE,
Judge of the Thirteenth Judicial Circuit of the State
of West Virginia, to the Jury Panel of Said Court in
Memory of Judge George W. McClintic, on the 28th
Day of September, 1942*

Gentlemen, on the 25th day of September, 1942, this community sustained a distinct loss in the passing of a good man and a great judge by the demise of Judge George W. McClintic. He was my personal friend for many years. When I came here as a young lawyer—and I am sure such was the experience of other young members of the Bar—he went out of his way to be friendly and kind to me, and upon occasions was helpful in advice in professional matters. My acquaintance with him was that of a close personal friend, and that relationship continued throughout the period of the thirty-seven years that I have resided here.

I know that Judge McClintic was known to each of you personally who has lived in this community for any length of time, and known to you as an outstanding citizen and irreproachable public official. He was a man of the highest personal, moral and judicial courage, and unswerving integrity.

Perhaps as much as any person of his generation, he had a most intimate acquaintance with the state's prominent characters, the ones who molded and directed the development of the state, and with the knowledge thus gained, and with his penetrating mind and remarkable memory, he was well versed in the state's history, political, economic and judicial, and upon many occasions spoke upon that subject, always having a most attentive and appreciative audience.

If the full truth was generally known of Judge McClintic's nature, despite the reputation that he gained for harshness in the enforcement of—I was going to say an unpopular law; unpopular to some and popular to others—but a law that certainly was found to be not workable, his acts of kindness and mercy would more than counter-balance that reputation for harshness and sternness. I am advised that upon many occasions he delighted in remitting fines, and that in cases of a first offender of that statute, he was nearly always lenient, eager to help rather than desirous of punishing, and such was true generally of violators of other penal statutes.

Judge McClintic took a peculiar interest in one of our wisest and most humane laws, the one relating to probation and parole. He made an intense study of it and frequently spoke upon it. I think it may be said that in the State of West Virginia at least, both in his own court and as reflected in similar laws in the state courts, he was the father of probation and parole. He believed in it. He made it workable, gave example of such fact to other courts in which such law exists.

There was an instance of an English judge who, when approached by the King, after other judges had abjectly yielded to the King's demand to recognize certain of his prerogatives, was asked by the King the direct question, "Should the King's personal prerogatives conflict with that of the interest of the realm or of the citizen, whether he would not feel it his duty to decide in the King's favor," and this judge straightway replied, "When I am confronted with such an issue, your Majesty, I will do that which a judge should rightly and properly do." I can well imagine Judge McClintic making just such a bold and forthright answer to such a question had he been the judge in question.

I am reminded, gentlemen, of what was said of a very great judge of this court some fifty years ago, the late George W. Summers, in a resolution adopted by the Bar of the Court: "Resolved, that we heartily unite in the expression of our admiration of the stern impartiality which he has uniformly exhibited in the administration of the law in this circuit, the crowning virtue of judicial character." I think that can well be said of Judge McClintic's record in the high court of justice over which he presided for some twenty years.

In the Biblical tradition it may be truly said of him that he "Heard the causes between his brethren, and judged righteously between every man and his brother, and the stranger that was with

him; that he respected not persons in judgment, but heard the small as well as the great; and that he was not afraid of the face of man."

I had in mind, gentlemen, to adjourn court today out of respect to his memory, but as his funeral ceremonies were conducted yesterday, and knowing him as I did, I am sure that he would say, "Let the work of the court go on and forget me."

THE COURT (Judge Moore): I wish to read a telegram and letter which have been received. The telegram is from the Honorable John J. Parker, Senior Circuit Judge of the Fourth Circuit,

HON HARRY E WATKINS UNITED STATES DISTRICT JUDGE
FEDERAL BLDG CHARLESTON WVIR

JUDGES SOPER DOBIE AND I REGRET THAT WE CANNOT ATTEND MEMORIAL SERVICE IN HONOR OF JUDGE MCCLINTIC THIS AFTERNOON BUT WISH TO PAY TRIBUTE TO HIS HIGH CHARACTER OUTSTANDING ABILITY AND DISTINGUISHED SERVICE AS A JUDGE

JOHN J. PARKER SENIOR CIRCUIT JUDGE.

JUDGE MOORE: The letter is from Armistead M. Dobie personally, and reads as follows:

Charlottesville, Virginia
November 11, 1942

Honorable Ben Moore,
United States District Judge,
Charleston, West Virginia.

Dear Judge:

I have just received an invitation, in the name of Judge Watkins and yourself, to attend the memorial exercises to be held in honor of Judge McClintic in Charleston on November 12. As I am leaving for Baltimore to attend a session of our Court, this morning, it will be impossible for me to accept this invitation.

For Judge McClintic, I entertained feelings of affection and esteem, and I hope you will convey to the meeting my regrets that I shall not be able to attend the exercises and pay tribute to our old friend and colleague.

Sincerely yours,

ARMISTEAD N. DOBIE.

THE COURT (Judge Watkins): If there are any friends here today who have anything they wish to add to what has already been said, you will now be given an opportunity to speak.

Remarks of

ROBERT S. SPILMAN, Esq.

May it please your Honors, at the suggestion of Judge Moore a number of lawyers in the Southern District were notified of this occasion and invited to be here. Some are here and others have expressed their regret at not being able to attend. Among these is George Richardson, Jr., of Bluefield, from whom I have a letter saying that if any record is made of this memorial he would like on his own behalf and that of the Bluefield Bar to add a brief tribute.

Running through all the memorials of Judge McClintic that have been presented here are two things that those who in days to come shall read aright that characteristic portrait, presented here today, will see in it. One is great courage. No man had more either on the bench or off it, as witness his conduct of what were known as the Red Jacket cases, back in the turbulent days of the "armed march." Appeals from preliminary orders made by Judge McClintic from time to time went to the Circuit Court of Appeals three or four times. The trial of the main issues before him lasted for weeks and there was hardly a day during that period that the Judge did not receive letters threatening not only himself but members of his family. Never once was he swayed from taking such action as he thought was right. Now this takes courage of a high order, both judicial and personal, and it is merely one instance of many that could be cited occurring during his twenty years on the bench. You may recall that Judge McClintic's final decrees enjoining the Miners' Union from attacking and interfering with non-union workmen put

an end to the reign of anarchy then existing in the coal fields of southern West Virginia and brought a lasting industrial peace. His decrees in these cases, which were bitterly attacked by politicians and certain labor leaders both in and out of Congress, were affirmed by the Circuit Court of Appeals and impliedly approved by the Supreme Court of the United States, which refused to review the memorable opinion of the Circuit Court. Judge McClintic's fearless conduct of these cases was of inestimable service to his State.

His other outstanding quality, less apparent on the surface but equally characteristic, was a great tenderness and sympathy for the misfortunes of others, particularly those whom he regarded as more sinned against than sinning, due to the understanding heart he had. As has been said here today he was the proponent, the father, of the probation system, the system of release upon parole rather than imprisonment. During his career upon the bench I understand there were some five thousand cases in which he granted probation. It is rare that in one man you see two traits that stand at opposite extremes of human character—unflinching courage and a warm tenderness—so blended as they were in Judge McClintic. As illustrating the latter, an incident comes to mind that may be of interest to his friends here. Some of the memorials which have been read have referred to his love of the out-of-doors, particularly of Pocahontas County where he was born and bred. He was a confirmed camper, and many years ago during the trout season Judge McClintic's party was camped at the forks of Cranberry River in Pocahontas County, an inaccessible spot upon a turbulent stream. He had gone down the river fishing and a short time before dark as he was coming up he passed an abandoned camp where those who had used it had left a hound, then in the last stages of starvation,—a hound they had brought there probably for the purpose of chasing the King's deer, which had strayed off or was purposely left behind. At any rate the dog was so weak he couldn't stand. There was no pathway up Cranberry to the McClintic camp. The river was the only route and it was three miles up stream. It was about as much as a man could do usually to wade that three miles carrying nothing heavier than a trout rod, but the Judge picked up that starved hound in his arms, carried him the whole distance and kept him until he broke camp. He took him back to his farm at Swago and as it turned out got a fine dog that was famous in that country for many years. The incident is merely an illustration of a

characteristic trait that made it, as his Clerk has said, almost impossible for him to sentence a woman to prison where it meant taking her away from a home where she was needed, no matter how guilty she was.

On the bench, upon the civil side, I believe if you were going to try to designate one guiding principle that ran through Judge McClintic's decisions and opinions, it would be that he recognized the rights of private property honestly acquired and properly exercised, and he protected and enforced such rights at times and under circumstances when there was clamor and pressure to the contrary. He belonged to the school of lawyers who believed that property as well as liberty is in many instances protected by the same constitutional provisions and that you cannot ignore the one without impairing the other.

The memorials that have been presented here so fully cover his career that there is little to add to what has been said,—beyond the observation that those who knew him will never forget him. There was that in the rugged character of the man to make him one of the men that will never be forgotten by those who knew him at the bar, upon the bench or in more personal relations, while memory lasts. To those who in years to come shall practice in this Court his portrait will recall a fearless and learned Judge whose loss the bench and bar of this Court today deplore.

THE COURT (Judge Watkins): The Reporter will make a transcript of the minutes of this session of court, and they will become a permanent part of our records. Mr. Reporter, you will see that the Mercer County Bar memorial is also included in the report.

If there is nothing further, Mr. Marshal, you may adjourn court.

(The memorial of the Mercer County Bar Association was later furnished to the reporter. The same is as follows:)

Memorial of
THE MERCER COUNTY BAR ASSOCIATION

Presented by
GEORGE RICHARDSON, JR., President
West Virginia Bar Association

While serving as Judge of The United States District Court for the Southern District of West Virginia, The Honorable George W. McClintic won the abiding respect and love of the Mercer County Bar.

THEREFORE, BE IT RESOLVED that The Mercer County Bar Association record its appreciation of Judge McClintic as a fearless man, a stalwart citizen, a staunch friend, a learned lawyer and a just and distinguished judge whose vigorous personality and firm administration of justice governed always by a penetrating intellect, abhorrence of wrongdoing but withal a broad human sympathy and devotion to duty, served well his state and nation; and

That a copy of the resolution, duly certified by the Secretary of the Association, be sent to his daughter, Miss Elizabeth McClintic, and a copy to the Official Reporter for The District Court of The United States at Charleston.

A true copy of Resolution duly adopted by The Mercer County Bar Association November 23, 1942.

Teste: L. B. SUTHERLAND,
Secretary.

JUDGE BEN MOORE'S MEMORIAL

Presented at the Judicial Conference of the Fourth Circuit,
Asheville, N. C., June 11, 1943.

MEMORIAL TO THE LATE HON. GEORGE W. McCLINTIC

By Ben Moore, United States District Judge

As the judge who succeeded the Hon. George W. McClintic on the bench of the Southern District of West Virginia, I have been given the privilege of presenting to the Conference a memorial in his honor.

Judge McClintic while living had a definite distaste for empty phrases of eulogy or adulation; and they would be out of place here. Nor are any such needed in order to express the thoughts and feelings of us, his friends, concerning his life and character.

He was a good man; an honest man; a plain man; a fearless man. He hated sham and hypocrisy; he loved justice and fair dealing. He was possessed of the most intense and unswerving convictions on every subject in which he took an interest. He never hesitated for an instant to express his convictions and to act upon them, regardless of whether the expression or the act gained him friends or enemies.

You who were his colleagues in the Fourth Circuit do not need to be reminded of the unflagging interest which Judge McClintic maintained in the meetings of this Conference and in its work. You will remember that at the last meeting of his health permitted him to attend, in June, 1941, he delivered an address on "Fifty Years of the Circuit Court of Appeals," which was a masterpiece of its kind. Not many months after that, he was overtaken by the long and painful illness which resulted in his death, on September 25, 1942, at the age of 76 years.

Judge McClintic possessed a knowledge of the history of his native state and an insight into the character of its people such as few men have. His power of memory were phenomenal. All important happenings, public and private, of his long and eventful life, seemed to be pictured in his mind as if they had occurred but yesterday.

His likes and dislikes among men, lawyers and judges were definite and pronounced. There were many who thought him harsh and abrupt; and so he was, at times. But his harshness was usually that of the frank, honest man towards those who he felt were dissembling; and his abruptness was that of the plain, blunt man who sometimes loses patience with indirectness and circumlocution.

Unquestionably there was a certain roughness about this man; a certain asperity; an acerbity of temper and demeanor which sometimes had its effect upon proceedings in his court. But these qualities did not penetrate beneath the surface of his personality. Those who knew him best were well aware of his innate kindness and his sympathy for the weak and unfortunate. His character in this respect is best shown by his extensive and wise use of probation. He was one of the first of the District Judges to employ the probation system, and during his twenty years of service he made use of it in literally thousands of cases. The small percentage of violations of probation shown by the court records is evidence of the wisdom with which he exercised his discretionary power.

Without flattery or exaggeration, it can be said that Judge McClintic was a great judge. During his term and in his district, respect for the power, the dignity and the justice of the United States Court was maintained and strengthened. His character, his personality and his official career have left an impress upon the people of the Southern District of West Virginia and upon the judges and lawyers of the Fourth Judicial Circuit which will not soon fade away.

